



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2015-0793; FRL-9947-27-Region 9]

**Partial Approval and Partial Disapproval of Air Quality State Implementation Plans;
Arizona; Infrastructure Requirements to Address Interstate Transport for the 2008 Ozone
NAAQS; Correction**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects an omission in the final rule document published on May 19, 2016, announcing the Environmental Protection Agency's (EPA's) approval in part and disapproval in part of State Implementation Plan (SIP) revisions submitted by the Arizona Department of Environmental Quality to address the interstate transport requirements of Clean Air Act section 110(a)(2)(D)(i) with respect to the 2008 ozone national ambient air quality standard. The correction of this omission does not change the EPA's final action to approve in part and disapprove in part these SIP revisions.

DATES: This correcting amendment is effective on June 20, 2016.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 972-3856, kelly.thomas@epa.gov.

SUPPLEMENTARY INFORMATION: On March 22, 2016 (81 FR 15200), the EPA proposed to approve in part and to disapprove in part SIP revisions submitted by the Arizona Department of Environmental Quality (ADEQ) on December 27, 2012, and supplemented on December 3, 2015, to address the interstate transport requirements of Clean Air Act (CAA or

Act) section 110(a)(2)(D)(i) with respect to the 2008 ozone National Ambient Air Quality Standard (NAAQS). More specifically, in the March 22, 2016 proposed rule, the EPA proposed to approve Arizona's SIP as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) prongs 1 and 2 and to disapprove Arizona's SIP with respect to the interstate transport requirements of CAA section 110(a)(2)(D)(i)(II) prong 4. *Id.*, at 15204. No comments were submitted on the EPA's March 22, 2016 proposed action. On May 19, 2016 (81 FR 31513), the EPA published a final rulemaking action announcing its approval in part and disapproval in part of the relevant SIP revisions as proposed on March 22, 2016. However, in its May 19, 2016 final rule, the EPA inadvertently omitted the regulatory text that codifies the final action taken therein. This document corrects that oversight.

The EPA has determined that this action falls under the "good cause" exemption in section 553(b)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary or contrary to the public interest. Public notice and comment for this action are unnecessary because the action codified herein was already subject to a 30-day comment period beginning with publication of the related proposed rule on March 22, 2016, and as noted above, no comments were submitted. Thus, no purpose would be served by additional public notice and comment.

The EPA also finds that there is good cause under APA section 553(d)(3) for the regulatory text added herein to become effective on the same date as the final rulemaking for which the regulatory text was inadvertently omitted. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting

period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rule merely adds regulatory text codifying the partial approval and partial disapproval action that the EPA published on May 19, 2016, which is 30 days from the date on which this rule will become effective. The May 19, 2016 final rule thus provided sufficient notice and time for affected parties to take appropriate action to the extent any action is necessary to comply with the rule. For these reasons, the EPA finds good cause under APA section 553(d)(3) for the regulatory text codified herein and associated with the May 19, 2016 final rule to become effective on same date as the May 19, 2016 final rule becomes effective (i.e., June 20, 2019).

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely adds regulatory text inadvertently omitted from a previous final rule and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely adds regulatory text inadvertently omitted from a previous final rule, and does not impose any additional enforceable duty beyond that required by

state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

This rule also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule merely corrects an inadvertent omission of regulatory text for a previously published final rule, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA). This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant. In addition, this rule does not involve technical standards, thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule also does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United

States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, the EPA has made such a good cause finding, including the reasons therefore, and established an effective date of June 20, 2016. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after the date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Oxides of nitrogen, Ozone, and Volatile organic compounds.

Dated: May 24, 2016.

Alexis Strauss,
Acting Regional Administrator,
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(174) to read as follows:

§ 52.120 Identification of plan.

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(c) * * *

(174) The following plan was submitted on December 3, 2015 by the Governor's designee.

(i) [Reserved]

(ii) Additional materials.

(A) Arizona Department of Environmental Quality.

(I) SIP Revision: Clean Air Act Section 110(a)(2)(D), 2008 Ozone National Ambient Air Quality Standards (December 3, 2015).

3. Section 52.123 is amended by revising paragraph (o) to read as follows:

§ 52.123 Approval status.

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(o) *2008 8-hour ozone NAAQS*: The SIPs submitted on October 14, 2011, December 27, 2012, and December 3, 2015 are fully or partially disapproved for Clean Air Act (CAA) elements 110(a)(2)(C), (D)(i)(II), D(ii), (J) and (K) for all portions of the Arizona SIP.

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